



Michigan Foreclosure Task Force

June 5, 2013
State Representative Michael Callton
House Financial Services Committee Chair
Anderson House Office Building
Lansing, MI

Dear Chairman Callton:

I am testifying on behalf of the Michigan Foreclosure Task Force (MFTF), a broad-based statewide coalition pulled together by the Community Economic Development Association of Michigan (CEDAM) in 2007 to respond to the foreclosure crisis in our state. Our membership consists of nearly 200 organizations including housing counseling agencies, legal aid offices, and local units of government, realtors, title companies, local community development corporations and statewide advocacy organizations.

After careful consideration, the MFTF and its members have decided to oppose the tie-barred package of HB4764-4767. We do this reluctantly and with considerable frustration. If these bills were voted on separately, we would enthusiastically support HB4764 which would extend through January 9, 2014, Michigan's Pre-Foreclosure Negotiation Law due which is due to sunset at the end of the month. But because that bill is tie-barred to three other bills – HB4765-4767 which among other things shorten Michigan's longstanding Six-month Redemption Period to 60 days, we are opposing the entire package. Simply put, the MFTF believes that the benefits of extending Michigan's Pre-Foreclosure Negotiation Law are far outweighed by the short and long-term damage that would be done by passing the other three bills, particularly HB4765 and HB4767.

As we all know, Michigan was hit earlier, harder and is taking longer to recover from the mortgage foreclosure crisis than the vast majority of states around the country. While the good news is that the numbers of foreclosures in Michigan are steadily declining – down 23% from a year ago and 43% from two years ago - the bad news is that we are still in a crisis. During the 12-month period from March 2012 to March 2013, Michigan lost 70,000 homes to foreclosure making it the third highest number of foreclosures in the country during that period. The point is that we are still dealing with a flood of foreclosures *and* the cumulative effect of the past seven years of this crisis. We need policies that help prevent as many foreclosures as possible now and in the future.

For the past several years, the combination of Michigan's Pre-Foreclosure Negotiation Law and six-month Redemption Period have effectively prevented foreclosures when possible and when prevention is not possible, have provided homeowners the time to find safe, affordable housing. This has been documented for the past three years in an annual survey of HUD and MSHDA-certified foreclosure prevention counselors and legal aid attorneys working with homeowners across the state. Together, HB4765 and HB4767 would seriously **hamper foreclosure prevention efforts** during a still fragile economic recovery and **eliminate critical protections for homeowners** at a time when proof of fraudulent and illegal foreclosures are common knowledge and routinely front page news.

Let me take these two bills one at a time. First, HB4765. This bill would repeal Michigan's Pre-Foreclosure Negotiation law on January 10, 2014 when the new federal Consumer Financial Protection Bureau (CFPB) mortgage servicing rules kick in. We have several concerns about this blanket repeal. While the federal rules are certainly

voluminous, there are some very critical requirements they *do not* address, requirements that the Michigan law that HB4765 seeks to repeal, *does* address.

These include:

1. **Requiring a lender- designated agent with the authority to make a decision on a loan modification to meet in person or on the phone with the at-risk homeowner to try to work something out to avoid foreclosure.**
2. **Requiring the lender to include in the notification letter to the homeowner a list of both HUD and MSHDA-certified foreclosure prevention counseling agencies.** (CFPB rules only require a list of HUD-certified agencies. There are 51 MSHDA-certified counseling agencies serving homeowners across the state. CFPB rules would not require that they be included in the letter so homeowners would miss out on free foreclosure-prevention services provided by these agencies.)
3. **Prohibiting anyone from taking on the roles of foreclosure prevention counselors or legal service attorneys** as they are defined within the law (This is essential to protecting Michigan residents from scammers posing as legitimate foreclosure prevention counselors and attorneys.)
4. **Laying out a basic loan modification standard for servicers.** (While the federal Making Home Affordable Program known as HAMP requires similar standards of lenders who participate in that program, not all lenders participate, so the Michigan law makes sure there are standards in place for those not participating in HAMP.)

Additionally, unlike the new CFPB rules, Michigan's existing law has some teeth in terms of enforcement. Under Michigan law, a lender who does not comply with the law is denied the ability to foreclose by advertisement. This means a non-compliant lender has to pursue the foreclosure through the courts which is a much longer, more expensive process. This has worked as a significant deterrent to non-compliance. The way enforcement is handled under the new CFPB rules is to 1) Give the CFPB oversight authority, the resources for which are questionable considering the new and controversial nature of the agency and 2) Give the homeowner the right to sue. Unfortunately that right is limited to suing for material damages. Under the CFPB rules, a homeowner cannot sue to prevent a foreclosure. The bottom line is that the new CFPB rules, while they occupy thousands of pages, they don't do as good a job as the Michigan's existing law does in the overall effort to prevent foreclosures. We would like to see the key provisions of Michigan's current Pre-Foreclosure Negotiation Law that are outlined above, made permanent instead of eliminated as part of the blanket repeal proposed by HB4765.

On to HB4767 which would shorten Michigan's longstanding 6-month Redemption Period to 60 days. Several years ago, Michigan made a decision to allow lenders to foreclose by advertisement rather than to require them to go through the courts (judicial foreclosure). Lenders prefer foreclosure by advertisement because it takes less time and costs less money. Judicial foreclosure, however, provides both the lender *and* borrower equal protections under the law. The trade-off Michigan made when we decided to allow lenders to speed up the foreclosure process in this way was to guarantee that in return, homeowners would have a reasonable 6-month Redemption Period in which to challenge a fraudulent or illegal foreclosure. HB4767 all but eliminates the homeowner's ability to do this by shortening to 60 days the time they have to basically assemble and mount their case. Billions of dollars' worth of settlements over the past couple years with an ever-growing list of large mortgage servicers have made clear that illegal or fraudulent foreclosures happen every day, tens of thousands of them in Michigan. HB4767 would leave Michigan's at-risk homeowners at the mercy of this reality.

This bill would also seriously hamper foreclosure prevention efforts across the state during a still fragile economic recovery. It will reduce to 60 days, the time a homeowner has to regain a job or come up with money from family members or other sources to save the home. With a slow but steadily improving job market, a 6-month Redemption Period vs. a 60-day Redemption Period can make the difference between saving a home or saddling Michigan with yet another damaging foreclosure, adding one more to the ongoing stream of tens of thousands a year.

HB4767 will also reduce to 60 days the time a homeowner has to avoid a foreclosure by selling their home on a *short* sale. Closing on a short sale typically takes the entire 6-month Redemption Period. Short sales have become one of the most effective foreclosure prevention tools we have, currently making up 5%-10% of all Michigan home sales. HB4767 would turn those 5% - 10% of Michigan home sales into foreclosures. While a short sale doesn't keep the homeowner in their own home, it *does* prevent a foreclosure so the homeowner's credit doesn't suffer and the neighborhood and community are spared another vacant property and the resulting lowered property values and reduced tax revenue that is used to fund basic services for everyone.

A short sale that prevents a foreclosure also helps raise property values. According to a recent RealtyTrac report, the average price of homes sold through a short sale is \$175,000 vs. \$147,000 when a home is repossessed by the lender. Additionally, a recent National Fair Housing study found that properties repossessed by the lender known as REO properties also tend to remain vacant longer and are often neglected by the lender/owner, resulting in a loss of value and marketability. HB4767 would also reduce to 60 days the time a homeowner has to find a safe, affordable place to relocate, tough to do when your credit has just been ruined.

The bottom line is that the Michigan Foreclosure Task Force believes we can do better for Michigan homeowners, neighborhoods and communities than what is reflected in this package of bills. While we are opposing the entire package because they are tie-barred, we encourage you who represent us to pull these bills apart, pass HB4764 to avoid the June 30th sunset of Michigan's existing Pre-Foreclosure Prevention Law and consider amendments to HB4765 and HB4767 that address the serious concerns we've laid before you. We look forward to working with the committee to make this happen on behalf of Michigan homeowners, neighborhoods and communities.

Respectfully,

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